

ATTACHMENT 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION**

UNITED STATES OF AMERICA and)	
THE STATE OF WISCONSIN,)	
)	
Plaintiffs,)	
)	
v.)	
)	
NCR CORPORATION,)	
APPLETON PAPERS INC.,)	
BROWN COUNTY,)	
CITY OF APPLETON,)	
CITY OF GREEN BAY,)	
CBC COATING, INC.,)	Civil Action No. 10-C-910
GEORGIA-PACIFIC CONSUMER PRODUCTS LP,)	
KIMBERLY-CLARK CORPORATION,)	
MENASHA CORP.,)	
NEENAH-MENASHA SEWERAGE COMMISSION,)	
NEWPAGE WISCONSIN SYSTEMS, INC.,)	
P.H. GLATFELTER CO.,)	
U.S. PAPER MILLS CORP. and)	
WTM I COMPANY,)	
)	
Defendants.)	

STIPULATION RE: PRETRIAL & TRIAL PROCEDURES

In the interests of judicial economy, and to facilitate an efficient use of the Court's and the parties' time in advance of and during the trial scheduled to begin on December 3, 2012, for the above-captioned matter (the "December Trial"),

IT IS HEREBY STIPULATED by Plaintiffs the United States of America and the State of Wisconsin (collectively, "Plaintiffs"), and Defendants NCR Corporation ("NCR"), Appleton Papers Inc. ("API"), the Georgia-Pacific Defendants,¹ P.H. Glatfelter

¹ The "Georgia-Pacific Defendants" refers to Defendants Georgia-Pacific Consumer Products LP (f/k/a Fort James Operating Company), Fort James Corporation and Georgia-Pacific LLC.

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Company, WTM I Company, CBC Coating, Inc., U.S. Paper Mills Corp., Menasha Corp., City of Appleton and Neenah-Menasha Sewerage Commission (collectively, “Defendants”), as follows:

1. **Stipulated Facts:** ~~On or before Tuesday, November 6, 2012, Plaintiffs may send to Defendants, by email, proposed stipulated facts related to any issues subject to adjudication at the December Trial (the “Trial Issues”).~~ On or before Tuesday, November 13, 2012, Plaintiffs and Defendants, individually or collectively,² shall ~~send to Plaintiffs~~exchange, by email, proposed stipulated facts related to any issues subject to adjudication at the December Trial (the “Trial Issues”).~~responses to Plaintiffs’ proposed stipulated facts. Defendants may also send to Plaintiffs, by email, additional proposed stipulated facts related to any Trial Issues.~~ On or before Tuesday, November 20, 2012, Plaintiffs and Defendants shall exchange~~send to Defendants~~, by email, responses to ~~Defendants’~~ the opposing Parties’ proposed stipulated facts. On or before ~~Wednesday~~Monday, ~~November 28~~6, 2012, Plaintiffs and Defendants shall jointly file, as part of the Joint Pretrial Report Update, any facts to which Plaintiffs and Defendants are willing to stipulate.³

² Unless otherwise specified, all references to “Defendants” herein shall mean “Defendants, individually or collectively”. All references to the “Other Defendants” shall mean all stipulating Defendants other than NCR and API.

³ If a fact pertains to only one Defendant (or a subset of the Defendants), then Plaintiffs need only obtain agreement from that Defendant (or subset of the Defendants) to include the stipulated fact in the Pretrial Report.

2. **Expected Trial Witness Lists:** On or before Friday, November 9~~2~~, 2012, Plaintiffs and Defendants shall exchange, by email, witness lists, which shall be limited in good faith to only those witnesses whose live testimony (or deposition testimony in lieu of live testimony) Plaintiffs and Defendants expect to present during the December Trial. If either side plans to supplement its list after Friday, November 9~~2~~, 2012, as a result of the responses to the proposed stipulated facts (*see* Paragraph 1) or for any other reason, it shall promptly notify the other side.

3. **Use of Deposition Testimony:**

(A) Witnesses within the subpoena power of the Court can be presented by deposition testimony in lieu of live testimony pursuant to the agreement of all parties. If a party lists a witness within the subpoena power of the Court as being presented by deposition, other parties have the right to object on or before Monday, November 19, 2012. If an objection is made, the witness must be called live, if at all, pursuant to the Federal Rules.

(B) The parties may designate testimony from depositions taken in *Appleton Papers Inc., et al. v. George A. Whiting Paper Co.*, No. 08-cv-16 (E.D. Wis.).

4. **Motions *in Limine*:** On or before Tuesday, November 20, 2012, all motions *in limine* shall be filed; any response shall be filed seven days after a motion is filed. Parties shall not file a reply brief to any motion *in limine*, unless requested by the Court.

5. **Joint Pretrial Report:** ~~Plaintiffs shall provide a draft of the joint Pretrial Report to Defendants, by email, on or before Wednesday, November 14, 2012. Defendants shall incorporate their sections into the Report and provide any other comments to Plaintiffs on or before Wednesday, November 21, 2012. Plaintiffs and Defendants shall then meet and confer about the Report as needed. On or before Monday, November 26, 2012, Plaintiffs and Defendants shall jointly file the Report. On Monday, November 19, 2012, each Party shall file a Pretrial Report in accordance with The Report shall include the following, pursuant to Civil L. R. 16(c), as amended by agreement of Plaintiffs and Defendants:~~

~~(A) — A concise summary, not to exceed four pages, of the facts, claims and defenses. Plaintiffs and Defendants shall work in good faith to prepare a joint summary. If agreement cannot be reached, Defendants and Plaintiffs shall have the option of preparing separate summaries, not to exceed two pages for Plaintiffs, and two pages for NCR and two pages for the Other Defendants (collectively);~~

~~(B) — A concise statement of the issues, not to exceed two pages. Plaintiffs and Defendants shall work in good faith to prepare a joint statement. If agreement cannot be reached, Plaintiffs and Defendants shall have the option of preparing separate statements, not to exceed one page for Plaintiffs, and one page for NCR and one page for the Other Defendants (collectively);~~

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~~(C) — A list of stipulated facts, if any;~~

~~(D) — The names and addresses of all witnesses expected to testify. Any witness not listed will not be permitted to testify absent a showing of good cause; and~~

~~i. — Plaintiffs may present any witness during trial who appears on their list or on any other party's list;~~

~~ii. — Defendants may present any witness during trial who appears on their list(s) or any other party's list;~~

~~(E) — A concise statement of the background of all expert witnesses listed;~~

~~(F) — Designations, counter designations and counter-counter designations, along with any objections to those designations, of all depositions or portions of transcripts or other recordings of depositions to be offered in evidence as part of this trial; and~~

~~(G) — A list of the intended trial exhibits, which shall be sequentially numbered according to General L.R. 26 where possible, along with any objections to those exhibits.~~

6. **Joint Pretrial Report Update:** On Wednesday, November 28, 2012, the Parties shall jointly file a Joint Pretrial Report Update the includes:

(A) Any Stipulations reached by the Parties pursuant to paragraph 1.

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(B) Updated Joint Exhibit Lists including objections as provided by Paragraph 9.

(C) Updated deposition designations and counter-designations as provided by Paragraph 8.

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~~6~~7. **Pretrial Conference:** On Friday, November 30, 2012, at 1:30 p.m., a final pretrial and settlement conference will be held at 125 South Jefferson Street, Green Bay, WI 54301, in Room 201. Trial counsel for all parties are required to appear in person. Parties need not appear, but should be available by telephone. (Dkt. #405.)

~~7~~8. **Deposition Designations:** The schedule for exchanging deposition designations shall be as follows:

(A) On or before Monday, November 12, 2012, Plaintiffs and Defendants shall exchange, by email, initial deposition designations;

(B) On or before Monday, November 19, 2012, Plaintiffs and Defendants shall exchange, by email, counter-designations and objections; and

(C) On or before Monday~~Friday~~, November ~~23~~30, 2012, Defendants and Plaintiffs shall exchange, by email, counter-counter designations and counter-objections.

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~~(C)~~(D) The Parties shall provide the list of all deposition designations, counter-designations and objections, and counter-

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counter designations and counter-objections as part of the Joint Pretrial Report Update.

9. **Intended Trial Exhibits:** The Parties hereby agree that Exhibits 1 through 1,376 are the documents that comprise the Site Administrative Record and the UAO Administrative Record. The Parties further agree that Exhibits 1 through 1,376 are admissible. In creating their respective exhibit lists, the Parties will use their best efforts to exclude documents that exist in the Administrative Record from their respective exhibit lists.

8. The schedule for exchanging intended trial exhibits shall be as follows:

(A) On or before Friday, November 16, 2012, Plaintiffs and Defendants shall exchange, by email, lists of intended trial exhibits. Plaintiff and Defendants must identify all exhibits by Bates number and include with its exhibit list any document not identified by a Bates number. The Parties will confer about their ability to provide electronic copies of all documents on their exhibit lists; Plaintiffs shall start their exhibit numbering at 2,000. NCR shall start its exhibit numbering at 4,000. The Other Defendants (collectively) shall start its exhibit number at 6,000 and may further divide up exhibit numbers in excess of 6,000 among themselves as needed.

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(B) On or before ~~Monday~~Friday, November 26~~3~~3, 2012, Plaintiffs and Defendants shall exchange, by email, objections to the intended trial exhibits;

(C) All unobjected-to intended trial exhibits listed by the parties shall be deemed admitted when offered by either side during trial. Notwithstanding the foregoing, Plaintiffs and Defendants agree that objections based solely on relevance are reserved for trial and need not be asserted as set forth above;

(D) Subject to any objections, Plaintiffs may offer any exhibit during trial that appears on their list or on any other party's list;

(E) Subject to any objections, Defendants may offer any exhibit during trial that appears on their list(s) or on any other party's list; and

(F) Demonstratives do not need to be included on the lists of intended trial exhibits.

~~(F)~~(G) The Parties shall provide a list of all exhibits and objections to the Court as part of the Joint Pretrial Report Update. The Parties shall also provide the court with an electronic copy of all exhibits.

9.10. Pretrial Briefs:

- (A) Plaintiffs, NCR and the Other Defendants may file a pretrial brief on or before Monday, November 26, 2012. There shall be no pretrial rebuttal briefs, unless requested by the Court;
- (B) The pretrial briefs shall not exceed 30 pages⁴ in total; and
- (C) The briefs shall comply with Civil General L.R. 5, unless otherwise agreed by the parties.

10.11. Trial Schedule: Consistent with the Court's procedures and subject to the Court's approval, Plaintiffs and Defendants propose the following trial schedule:

- (A) This case shall be called for trial on Monday, December 3, 2012, at 8:30 a.m., in the United State Courthouse, 517 E. Wisconsin Avenue, Milwaukee, Wisconsin;
- (B) Trial shall begin each morning at 9 a.m., unless otherwise directed by the Court; and
- (C) Trial shall last no longer than 15 business days, adjourning no later than Friday, December 21, 2012.

11.12. Trial Management:

- (A) The parties shall split the available trial time as follows: one-~~half~~^{third} for Plaintiffs (~~50~~³⁰ hours total); one-~~quarter~~^{third} for NCR (~~25~~³⁰ hours total); and one-~~quarter~~^{third} for the Other Defendants (collectively) (~~25~~³⁰ hours total);

⁴ The Other Defendants may submit separate pretrial briefs, but their briefs shall not exceed 30 pages collectively.

(B) Plaintiffs shall present their case-in-chief first, followed by NCR, followed by the Other Defendants;⁵

(C) The parties reserve their rights to present rebuttal cases, if the Court so allows and they have time remaining;

(D) The amount of time used by each side shall be monitored by the parties. After trial is adjourned each day, the designated representative for Plaintiffs, NCR and the Other Defendants shall confer about the time used by each group that day and in total. The parties shall work in good faith to resolve any discrepancies, with disputes taken to the Court only as a last resort;

(E) The following shall be deducted from Plaintiffs' available time:

- i. Direct and re-direct testimony of Plaintiffs' witnesses;
- ii. Cross-examination of Defendants' witnesses;
- iii. Presentation of deposition designations or counter-designations by Plaintiffs, whenever presented;
- iv. Presentation of written statements in lieu of testimony by Plaintiffs;
- v. Presentation of trial exhibits by Plaintiffs;

⁵ The other Defendants shall work in good faith to determine the order in which their cases will be presented. The order shall be included in the Pretrial Report. If the Other Defendants cannot agree on an order, then they shall submit their respective proposals to the Court.

- vi. Presentation and resolution of objections raised by Plaintiffs;
 - vii. Presentation of Plaintiffs' rebuttal, if any; and
 - viii. Any other arguments or presentations raised by Plaintiffs.
- (F) The following shall be deducted from NCR's available time:
- i. Direct and re-direct testimony of NCR's witnesses;
 - ii. Cross-examination of Plaintiffs' or the Other Defendants' witnesses;
 - iii. Presentation of deposition designations or counter-designations by NCR, whenever presented;
 - iv. Presentation of written statements in lieu of testimony by NCR;
 - v. Presentation of trial exhibits by NCR;
 - vi. Presentation and resolution of objections raised by NCR;
 - vii. Presentation of NCR's rebuttal, if any; and
 - viii. Any other arguments or presentations raised by NCR.
- (G) The following shall be deducted from the Other Defendants' available time:

- i. Direct and re-direct testimony of the Other Defendants' witnesses;
- ii. Cross-examination of Plaintiffs' or NCR's witnesses;
- iii. Presentation of deposition designations or counter-designations by the Other Defendants, whenever presented;
- iv. Presentation of written statements in lieu of testimony by the Other Defendants;
- v. Presentation of trial exhibits by the Other Defendants;
- vi. Presentation and resolution of objections raised by the Other Defendants;
- vii. Presentation of the Other Defendants' rebuttal, if any; and
- viii. Any other arguments or presentations raised by the Other Defendants.

(H) Housekeeping matters shall not be deducted from either Plaintiffs' or Defendants' available time; and

(I) Neither side shall present an opening or closing argument to the Court.

~~12.~~ 13. **Expert Testimony:**

(A) Any party shall have the option but not obligation to present a written statement prepared by an expert witness in lieu of live direct testimony of that expert;

(B) All prepared written statements must be provided to the other parties at least 48 hours (excluding weekend hours) in advance of when the statement will be presented to the Court. For example, if a party plans to present a written statement on Tuesday morning at 10 a.m., then the statement must be provided to the other side no later than the preceding Friday at 10 a.m.;

(C) Any objections to a written statement shall be made at the time the statement is presented to the Court; and

(D) Plaintiffs and Defendants agree to make any testifying expert witness available for cross-examination regardless of whether the expert's direct testimony is presented via written statement or live.

13.14. Notification of Witness Testimony: The parties shall notify each other ~~by 8:00 p.m. two days at least 48 hours (excluding weekend hours)~~ in advance of when any particular fact or expert witness will be called live, as well as of the order in which witnesses will be called on that particular trial day (e.g. the parties shall notify each other by Monday at 8:00 p.m. of the witnesses and the order of witnesses that it intends to call on Wednesday).

~~14~~15. **Exchange of Demonstrative Exhibits:** The parties shall provide each other with any demonstrative exhibit at least ~~24~~48 hours (including weekend hours) in advance of when that demonstrative exhibit will be used at trial.

~~15~~16. **Trial Equipment:** The parties shall share the cost of any audio-visual or other equipment that the parties intend to use at trial. The parties shall work together and with the Court in advance of trial to make the necessary arrangements.

~~16~~17. **Post-Trial Submissions:**

(A) On or before Monday, January 28, 2013, Plaintiffs, NCR and the Other Defendants shall each file proposed findings of fact and conclusions of law. Such submissions shall not exceed 75 pages⁶ in total;

(B) On or before Monday, February 25, 2013, Defendants and Plaintiffs may file responses to the proposed findings of fact and conclusions of law. Such submissions shall not exceed 50 pages⁷ in total for Defendants and 100 pages in total for Plaintiffs; and

(C) These filings shall comply with Civil General L.R. 5, unless otherwise agreed by the parties.

Dated: October [], 2012

⁶ The other Defendants may submit separate post-trial submissions, but their submissions shall not exceed 75 pages collectively.

⁷ The other Defendants may submit separate responses to the post-trial submissions, but their responses shall not exceed 50 pages collectively.

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